IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2718 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G.M. PANARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2718 of 1992

MR PRADEEP PATEL for Petitioner No. 1

MRS REETA CHANDARANA, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 19/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the order dated 29.2.92 by which the earlier order dated 4.9.87 was confirmed. By the order dated 4.9.87, the

Competent Authority had treated certain spells of absence of the petitioner between 2.11.82 to 12.6.83 as absence from duty. After one round of litigation, the petitioner was relegated to the respondents once again and at that stage, the Commissioner of Health and Medical Services, Gandhinagar by the said order dated 29.2.92 was pleased to uphold the earlier order dated 4.9.87 as the said authority found that the petitioner had remained absent without proper authorization on number of occasions between 2.11.92 and 11.6.83. The Authority, therefore, found that no interference is called for in the order dated 4.9.87.

2. The petitioner has stated in the petition that even if the said period of absence is treated as leave without pay, he would have no objection as long as the same does not result into break in service.

3. In the order dated 4.9.87, the Competent Authority had recorded that the request of the petitioner for granting leave for the aforesaid period is rejected and the said period shall be treated as absence from duty. It is nowhere stated that this would further result into break in service. Treating the absence from service as dies non can be either with break in service or without break in service. Treating the period of absence as dies non with break in service would result into adverse civil consequence affecting the retiral benefits of the Government servants. In the present case, no such specification has been made by the Competent Authority whether the absence would result into break in service or not. One may also note that the said order of 4.9.87 was not passed after giving an opportunity of being heard to the petitioner. Therefore, it is safe to conclude that by the order dated 4.9.87, the authority did not intend to treat the period of absence resulting into break in service. In that view of the matter and in view of the petitioner's statement in the petition that he would have no objection in treating the said period as leave without pay, but would have objection only in case the same results into break in service, I find that no further relief is required to be granted in the petition since I find that the order dated 4.9.87 would not result into break in service of the petitioner.

4. It may be noted that though the petition was filed in the year 1992, no reply has been filed by the respondents so far despite the fact that the petition was placed for final hearing before the Court recently on three or four occasions.

5. In the result, the petition is disposed of with the above observations. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)